

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY DNS DEPUTY CLERK

DAN SERGIO DE LA CRUZ,  
Plaintiff,

CAUSE NO.:  
A-17-CV-00163-SS

-vs-

THE BANK OF NEW YORK, AS  
TRUSTEE OF THE  
CERTIFICATEHOLDERS CWABS,  
INC., ASSET-BACKED  
CERTIFICATES SERIES 2005-9,  
Defendant.

**FINAL JUDGMENT**

On November 8, 2019, the Court granted and part and denied in part Defendant Bank of New York, as Trustee of the Certificateholders CWABS, Inc., Asset-backed Certificates Series 2005-9 ("BONY")'s Motion for Summary Judgment. *See* Order of Nov. 8, 2019 [#91]. The Court denied summary judgment on BONY's counterclaim for judicial foreclosure because a genuine issue existed as to whether BONY's right to foreclose had been extinguished under to the applicable statute of limitations. *See id.* at 10. But the Court granted summary judgment on BONY's counterclaim for equitable subrogation because it found BONY had involuntarily paid off a debt owed by Plaintiff Dan Sergio de la Cruz and the equities were in BONY's favor. *See id.* at 16.

The Court then explained the significance of these dual findings in the context of issuing a final judgment in this case:

Because the Court has granted summary judgment in favor of BONY on its equitable subrogation claim, BONY is entitled to recover the value of the subrogated lien plus legal interest, or approximately \$300,000. However, if BONY receives a favorable judgment on its judicial foreclosure claim, it would be entitled to recover the entirety of the debt owed by Plaintiff, or approximately \$563,000. Since a favorable judgment on its judicial foreclosure claim would permit BONY to recover a greater amount that it is entitled to

under equitable subrogation, BONY may prefer to proceed to trial on its judicial foreclosure claim.

*Id.* at 17. The Court accordingly permitted BONY to submit a proposed final judgment on its equitable subrogation claim or, in the alternative, a notice that BONY was electing to proceed to trial on its judicial foreclosure claim. *See id.*

BONY has filed its proposed final judgment. *See* Notice of Filing Proposed Final J. [#95]. BONY's proposed final judgment includes a declaration that BONY possess a subrogated lien in the amount of \$283,296.39, plus legal interest at the rate of 6% per annum from July 25 through the date of satisfaction of the lien; a declaration that BONY may enforce its subrogated lien by judicial foreclosure in the amount of \$529,182.13; and a dismissal of all claims Plaintiff could have asserted against BONY with prejudice. *See id.* BONY has also filed a motion dismissing its judicial foreclosure claim against Plaintiff without prejudice. *See* Notice of Filing Partial Dismissal [#94].

Shortly after BONY filed its proposed judgment, Plaintiff filed a pleading styled as an answer to BONY's proposed judgment and motion to dismiss. Pl.'s Answer Partial Dismissal & Proposed J. [#97]. In it, Plaintiff asserts that he should be afforded a trial on his quiet title claim and that BONY's judicial foreclosure claim should be dismissed with prejudice. *Id.* at 1. He further proposes the Court permit Plaintiff to list the property to satisfy and extinguish BONY's subrogated lien or, in the alternative, grant him 90 days to find financing to satisfy the lien. *Id.* at 2.

After careful consideration of these issues, the Court now enters the following final judgment:

IT IS ORDERED, ADJUDGED, and DECREED that BONY possesses a subrogated lien on the Property at issue in this lawsuit, *viz.* 12713 Bright Sky Overlook,

Austin, Texas 78732, described legally as Lot 3, Block "A", of STEINER RANCH PHASE ONE, SECTION 9, a subdivision in Travis County, Texas, according to the map or plat recorded under Document Number 200200113, in the Plat Records of Travis County, Texas, and that the value of this lien is TWO HUNDRED EIGHTY-THREE THOUSAND, TWO HUNDRED NINETY-SIX AND 39/100 DOLLARS (\$283,296.39), plus legal interest at the rate of 6% per annum, and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff has thirty (30) days from the entry of this order to satisfy the amount of BONY's subrogated lien, and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that in the event Plaintiff fail to reimburse BONY for the full value of the subrogated lien, BONY may enforce the lien through foreclosure, and

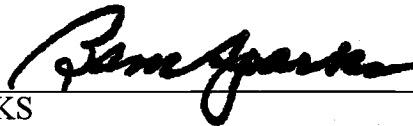
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that such foreclosure shall be performed consistent with the laws, rules, and procedures governing the same in the State of Texas, and

IT IS FURTHER ORDERED, ADJUGED, and DECREED that Plaintiff's quiet title is DISMISSED AS MOOT, and

IT IS ORDERED, ADJUDGED, and DECREED that BONY's judicial foreclosure counterclaim is DISMISSED AS MOOT, and

IT IS FINALLY ORDERED, ADJUGED, and DECREED that the costs of this lawsuit shall be borne by Plaintiff Dan Sergio de la Cruz.

SIGNED this the thirteenth day of May 2020.

A handwritten signature in black ink, appearing to read "Sam Sparks", is written over a horizontal line.

SAM SPARKS  
SENIOR UNITED STATES DISTRICT JUDGE